

Message Text

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FM SECSTATE WASHDC

TO AMEMBASSY DAR ES SALAAM

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E.O. 11652, N/A

TAGS: EINV

SUBJECT: NATIONALIZED COFFEE ESTATES

REFS: (A) DAR ES SALLAM 2779; (B) STATE 145618 (TO ADDIS
ABABA, JUNE 20, 1975)

1. GENERAL USG POLICY ON VALUATION OF EXPROPRIATED PROPER-
TY IS REPORTED REF B, A COPY OF WHICH WAS PROVIDED ECON-
COMMERCIAL COUNSELOR WATERMAN DURING MEETING WITH DEPART-
MENT OFFICIAL (EB) IN EARLY AUGUST. THE FOLLOWING COMMENTS
IN RESPONSE TO PARTICULAR EMBASSY INQUIRIES PARA 2 REF A
ARE INTENDED AS BACKGROUND FOR DISCUSSIONS WITH TANGOV
OFFICIALS CONCERNING COMPENSATION FOR FORMER OWNERS OF
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NATIONALIZED COFFEE ESTATES. WE BELIEVE EMBASSY SHOULD,

HOWEVER, AVOID TAKING A POSITION ON THE MERITS OF PARTICULAR CASES AND ITEMS OF COMPENSATION, AND SHOULD INSTEAD SEEK TO MAKE GENERAL USG POLICY CLEAR TO TANGOV, AND TO ENCOURAGE NEGOTIATED SETTLEMENTS.

A. PROFITABILITY: AS NOTED PARA 2A REF B, WE BELIEVE THE GOING-CONCERN APPROACH, WHICH ATTEMPTS TO MEASURE EARNING POWER (AND SO ENCOMPASSES ELEMENTS SUCH AS LOSS OF FUTURE PROFITS), GENERALLY BEST APPROXIMATES FAIR MARKET VALUE, AND TANGOV'S DECISION TO BASE COMPENSATION UPON PROFITABILITY SEEMS CONSISTENT WITH THIS VIEW (PROVIDED TANGOV'S DEFINITION OF PROFITABILITY COMPORTS WITH VIEW EXPRESSED PARA 2A REF B). IN CALCULATING EARNING POWER, PER-PERIOD EARNINGS ARE AVERAGED OVER AN AGREED HISTORICAL PERIOD, AND AVERAGE EARNINGS ARE THEN MULTIPLIED BY AN APPROPRIATE CAPITALIZATION RATE TO ARRIVE AT GOING-CONCERN VALUE. ACCORDINGLY, EVEN WERE TANGOV TO BASE ITS OFFER UPON "POTENTIAL PROFITABILITY," OPERATING RESULTS PRIOR TO OCTOBER 1973 WOULD BE DIRECTLY RELEVANT TO THE QUESTION OF VALUATION. CONVERSELY, PERFORMANCE SINCE NATIONALIZATION SHOULD NOT BE REPEATED NOT BE CONSIDERED IN EVALUATING THE ESTATE'S WORTH TO VON ZASTROW AS A GOING CONCERN, REGARDLESS WHETHER PAST OR POTENTIAL PROFITABILITY IS THE NOMINAL CRITERION TO BE APPLIED.

B. DIRECTORS' FEES: PARA 2B REF A REPORTS THAT THIS IS A COMMON BRITISH PRACTICE WHICH TANGOV PERMITTED TO CONTINUE AFTER INDEPENDENCE. IF THIS TREATMENT IS IN ACCORDANCE WITH TANZANIAN LAW, THESE PAYMENTS MIGHT BE THE SUBSTANTIAL EQUIVALENT OF A DISTRIBUTION FROM EARNED SURPLUS TO THE OWNERS OF THE ESTATE (WHICH MIGHT OTHERWISE HAVE ACCUMULATED IN RETAINED EARNINGS) WHICH OUGHT TO BE CONSIDERED IN DETERMINING GOING-CONCERN VALUE. THE TAX CONSEQUENCE OF THE FORM OF DISTRIBUTION IS A DISTINCT -- AND NOT NECESSARILY DISPOSITIVE--ISSUE, BUT TANZANIAN LAW SHOULD BE EXAMINED TO DETERMINE HOW THESE PAYMENTS TO THE RECIPIENTS WERE IN FACT TREATED.

C. BLOCKED BANK ACCOUNT: AMOUNTS IN VON ZASTROW'S BLOCKED ACCOUNT, INCLUDING POST-NATIONALIZATION PAYMENTS FOR LIMITED OFFICIAL USE

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SALES MADE PRIOR TO THE TAKING, MAY PROVIDE THE BASIS FOR ADDITIONAL ELEMENTS OF COMPENSATION. IN ANY EVENT, THESE ARE INDEPENDENT OF (AND A FORTIORI NOT TO BE DEDUCTED FROM) ANY PAYMENT TO WHICH HE IS OTHERWISE ENTITLED BASED UPON THE VALUE OF THE ESTATE AT THE TIME OF NATIONALIZATION.

D. SAFARI BUSINESS: VON ZASTROW'S COFFEE ESTATE AND HIS

SAFARI BUSINESS APPEAR, IN MANY RESPECTS, TO HAVE BEEN COMPLEMENTARY ENTERPRISES. FOR EXAMPLE, ACCESS TO THE ESTATE WAS A MAJOR FACTOR IN ATTRACTING SAFARI CLIENTELE, THE ESTATE WAS THE BASE FOR SAFARI OPERATIONS, AND VON ZASTROW ENLARGED THE HOUSE ON HIS ESTATE TO ACCOMMODATE SAFARI GUESTS. SINCE NATIONALIZATION OF THE COFFEE ESTATE CAUSED HIM TO ABANDON HIS RELATED BUSINESS (FROM WHICH HE DERIVED ROUGHLY HALF HIS INCOME), WE BELIEVE THAT THESE ADDITIONAL LOSSES OUGHT TO BE TAKEN INTO ACCOUNT IN DETERMINING THE AMOUNT OF COMPENSATION OWED VON ZASTROW.

2. DEPARTMENT WILL PROVIDE ADDITIONAL GUIDANCE AS

APPROPRIATE, AND LOOKS FORWARD TO A REPORT ON THE RESULTS OF THE MEETING BETWEEN MINFIN OFFICIALS AND REPRESENTATIVES OF THE FORMER OWNERS OF THE ESTATES. ROBINSON

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